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SUBJECT: UKRAINE: IPR ENFORCEMENT TRAINING FUNDS PROGRAM STARTS WITH JUDGES

REFS: A) KYIV 404

- B) 2007 STATE 154669
- C) 2007 KYIV 1452
- D) 2007 KYIV 1417
- E) 2007 STATE 55928

SENSITIVE BUT UNCLASSIFIED; NOT FOR INTERNET PUBLICATION.

1. (U) Summary: Post, in cooperation with CLDP (Commerce), launched a new IPR training initiative -- funded by STATE/INL -- with an IPR enforcement workshop for Ukrainian judges February 12-14. The event drew strong participation from 26 judges representing nearly all of Ukraine's geographical regions. U.S. experts provided a broad introduction to IP law and facilitated discussion of problematic issues faced by Ukrainian judges. Participants gave high marks to the event, and Post intends to continue to focus on the judiciary as this training program moves forward. End Summary.

#### IPR Training Program Launch

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2. (U) Post launched its intellectual property rights (IPR) training initiative "Creating a Sustainable Ukrainian IPR Training Capability" (ref D) with an IPR enforcement workshop for Ukrainian judges February 12-14. This initiative is part of the State Department's 2007 IPR Enforcement Training Funds Program (ref E), administered by the Bureau for International Narcotics and Law Enforcement Affairs (INL), which has allocated USD 125,000 for Ukraine (ref B). To implement the training initiative, Embassy Economic Section is working closely with the Department of Commerce's Commercial Law Development Program (CLDP), which is taking the lead in organizing the workshops. This first workshop was co-financed by CLDP, with its regular budget funds, and by Post, using the INL fund cite provided in ref B. Post will provide copies of all funding documents to INL/RM.

#### Strong Participation from Judiciary

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3. (U) The Ambassador opened the event, which received some press attention from business-oriented media outlets. Participation by the Ukrainian judges was quite strong. A total of 26 judges, from a mix of different courts and representing 20 of the country's 24 oblasts were in attendance. Mykola Baliuk, Judge of the Supreme Court of Ukraine, made several presentations underlining the

importance of judicial IPR enforcement. Judge Marvin Garbis, from the U.S. District Court for the District of Maryland, Debora Lashley-Johnson, from the U.S. Patent and Trademark Office, and Matthew Lamberti, Department of Justice Intellectual Property Law Enforcement Coordinator for Eastern Europe, provided expertise from the U.S. side. Representatives of Ukraine's State Department of Intellectual Property also took a lead role in delivering the training, in itself a goal of the program. Representatives of Ukraine's Ministry of Interior and Customs Service also participated.

IPR 101 for Judges  
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¶4. (SBU) Presentations covered copyright, trademark, and patent law, as well as key international IPR enforcement provisions. Judge Baliuk hit on several troublesome topics, for example urging judges never to return pirated or counterfeit goods to the infringer, as sometimes happens in administrative cases. The judges also heard complaints from law enforcement officials frustrated with the lack of severity of sentences handed down in IPR cases and with the need to provide detailed, expert analysis for every pirated optical disk seized, rather than just a sample. Some judges, in their turn, expressed frustration about the weak financial penalties authorized by current law and noted that the Ministry of Justice's State Execution Service did not do a good job enforcing court judgments. (Note: Ukrainian judges have no statutory authority to enforce their decisions. End note.)

¶5. (SBU) There were lengthy discussions on how judges should calculate damages in IPR cases, a tricky matter in Ukrainian law (ref C). Lamberti commented that the Supreme Court could develop guidelines to ensure consistency in the lower courts, and several of the Ukrainian judges present agreed. Judge Baliuk held short of promising such guidelines, but said that the Supreme Court was planning to issue a resolution on IPR as part of its upcoming

Plenary Session to help clarify some procedural questions.

Comment: Targeting Judges Proves Successful  
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¶6. (SBU) Post's input for this year's Special 301 Report (ref A) identified judicial training as a continued priority. Post held one training workshop for judges, prosecutors, and police in 2007 (ref C); this latest workshop was an attempt to expand such training to judges from the regions. Participants gave very positive feedback on the workshop, with one judge encouraging us to hold additional events for judges in the regions, particularly from courts of first instance, as they tend to be less aware of IPR issues. Embassy is working with CLDP to identify priorities for future workshops, and judicial training is likely to remain at the top of the list.

TAYLOR